

REMARKS/ARGUMENTS

Claims 23-29 are present in this application. By this Amendment, an Abstract of the Disclosure has been provided on a separate sheet, and claim 24 has been amended.

Reconsideration in view of the above amendments and the following remarks is respectfully requested.

Claims 23, 26, 27 and 29 were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 2,405,636 to Beck. This rejection is respectfully traversed.

With regard to the claimed discharge end of the vehicle frame and conveyor having a substantially fixed height, the Office Action accurately acknowledges that “the specification [in Beck] does not disclose the discharge end of the conveyor being height adjustable.” From this, however, the Office Action improperly infers that the discharge end disclosed in Beck therefore has a substantially fixed height. To the contrary, however, “to serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference and that it would be so recognized by persons of ordinary skill.” *Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264 (Fed. Cir. 1991).

The Beck patent is generally focused on independent drive means for each wheel of the vehicle. The structure of the conveyor is thus not pertinent to the invention, and details of the conveyor construction are neither described nor illustrated. The Beck patent provides some vague insight to the conveyor construction, however, in the paragraph beginning at column 1, line 54. The patent provides that an endless chain flight conveyor enables the coal to be unloaded mechanically from one end of the vehicle “in the usual manner.” Since no other prior

art reference of record describes a vehicle including a discharge end with a substantially fixed height, it is reasonable to assume that those of ordinary skill in the art would interpret the “usual manner” as a conveyor including a height adjustable discharge end.

For at least this reason, Applicants respectfully submit that the rejection is misplaced.

Independent claim 27 defines subject matter related to claim 23, and Applicants submit that claim 27 is allowable for similar reasons.

With respect to dependent claims 26 and 29, Applicants respectfully submit that these claims are allowable at least by virtue of their dependency on an allowable independent claim. Moreover, the Office Action incorrectly assumes that since the Beck specification is silent with regard to the discharge end being height adjustable that it follows that the discharge end must include “a discharge boom integrated into the vehicle frame defining a one-piece frame construction.” Similar to the reasons discussed above, however, Applicants respectfully submit that this missing descriptive matter is not necessarily present in the Beck description, and for this reason also, Applicants respectfully submit that the rejection is misplaced.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 23, 24, 27 and 28 were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 4,576,107 to Brasher. This rejection is respectfully traversed.

With regard to the fixed height of the discharge end, although the Office Action contends that Brasher discloses a discharge end having a substantially fixed height, the Office Action subsequently recognizes that “the discharge end is adjustable.” As would be apparent to those of ordinary skill in the art with reference to the present specification, an ability to adjust the height of the discharge end (as in Brasher) is in direct contrast with an important feature of the present invention. The specification describes that with the fixed height configuration of the discharge

end, there is no elevating (raised or lowered) discharge assembly, but rather the fixed height configuration provides for ease of operation, and reduces the cost and complication of the shuttle car, without any significant drawback. Additionally, elimination of the elevating discharge boom enables the integration of the discharge boom into the main part of the frame or body. This provides additional structural rigidity and integrity, eliminates weight and complexity of hinges and hydraulic devices, and provides additional cubic volume - all of which contribute to increased payload capacity. See, for example, page 9, line 26 - page 10, line 4.

Applicants thus respectfully submit that those of ordinary skill in the art would readily understand that the claimed "substantially fixed height" of the discharge end precludes any adjustability of the discharge end, and consequently, the Brasher patent is irrelevant to the present invention. Claim 27 defines related subject matter.

For at least these reasons, Applicants respectfully submit that the rejection is misplaced.

With respect to dependent claims 24 and 28, Applicants submit that these claims are allowable at least by virtue of their dependency on an allowable independent claim (although claim 24 has been rewritten herein in independent form, Applicants submit that it too is allowable at least by the inclusion of the claim 23 subject matter).

Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 25 was rejected under 35 U.S.C. §103(a) over Brasher in view of U.S. Patent No. 5,873,431 to Butler et al. The Butler patent, however, does not correct the deficiencies noted above with regard to Brasher. As a consequence, Applicants submit that claim 25 is allowable at least by virtue of its dependency on an allowable independent claim. That is, neither Brasher nor Butler provides any teaching or suggestion to modify the Brasher construction to include a

ALLEN et al.
Appl. No. 10/751,432
September 29, 2004

discharge end having a substantially fixed height. Withdrawal of the rejection is thus respectfully requested.


Applicants acknowledge the return of form PTO-1449 indicating the Examiner's consideration of the listed references. Applicants note, however, that the "Other Documents" listed in the bottom section of the form were not initialed by the Examiner. **PLEASE return another copy of the form PTO-1449 with an indication via the Examiner's initials that the "Other Documents" have been considered.**

In view of the foregoing amendments and remarks, Applicants respectfully submit that the claims are patentable over the art of record and that the application is in condition for allowance. Should the Examiner believe that anything further is desirable in order to place the application in condition for allowance, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Prompt passage to issuance is earnestly solicited.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 
Alan M. Kagen
Reg. No. 36,178

AMK:jls
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100